

# HOUSE BILL 947

M3, D3

3lr1726

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By: **Delegates Niemann, Oaks, and Carter**

Introduced and read first time: February 7, 2013

Assigned to: Judiciary and Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Lead-Based Paint Damages – Manufacturers of Lead Pigment**

3 FOR the purpose of providing that certain manufacturers of lead pigment may be held  
4 liable under any legally recognized theory of liability in certain actions for  
5 damages; providing that, in an action for damages, a person is not required to  
6 prove that a manufacturer manufactured the lead pigment contained in certain  
7 lead-based paint that caused the damage to establish the liability of the  
8 manufacturer; requiring the person to prove by a preponderance of the evidence  
9 certain elements in order to recover damages; requiring a trier of fact, if a party  
10 satisfies a certain burden of proof against a certain manufacturer to find the  
11 manufacturer liable, unless the manufacturer establishes certain facts by a  
12 preponderance of the evidence; requiring the trier of fact, if a certain  
13 manufacturer is found liable for certain damages, to apportion certain damages  
14 in a certain manner; providing that the liability of a certain manufacturer is  
15 joint and several; defining certain terms; and generally relating to the liability  
16 of manufacturers for damage caused by lead pigment in lead-based paint.

17 BY repealing and reenacting, with amendments,  
18 Article – Environment  
19 Section 6–801  
20 Annotated Code of Maryland  
21 (2007 Replacement Volume and 2012 Supplement)

22 BY adding to  
23 Article – Environment  
24 Section 6–848.3  
25 Annotated Code of Maryland  
26 (2007 Replacement Volume and 2012 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
28 MARYLAND, That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Environment**

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2 6–801.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) (1) “Affected property” means:

5 (i) A property constructed before 1950 that contains at least  
6 one rental dwelling unit;7 (ii) On and after January 1, 2015, a property constructed before  
8 1978 that contains at least one rental unit; or9 (iii) Any residential rental property for which the owner makes  
10 an election under § 6–803(a)(2) of this subtitle.11 (2) “Affected property” includes an individual rental dwelling unit  
12 within a multifamily rental dwelling.13 (3) “Affected property” does not include property exempted under §  
14 6–803(b) of this subtitle.15 (c) “Change in occupancy” means a change of tenant in an affected property  
16 in which the property is vacated and possession is either surrendered to the owner or  
17 abandoned.

18 (d) “Child” means an individual under the age of 6 years.

19 (e) “Commission” means the Lead Poisoning Prevention Commission.

20 (f) (1) “Elevated blood lead” or “EBL” means a quantity of lead in blood,  
21 expressed in micrograms per deciliter ( $\mu\text{g}/\text{dl}$ ), that exceeds the threshold level specified  
22 in this subtitle and is determined in accordance with the following protocols:

23 (i) A venous blood test; or

24 (ii) Two capillary blood tests taken in accordance with  
25 paragraph (2) of this subsection.

26 (2) If the capillary blood test method is used, an individual shall:

27 (i) Have a first sample of capillary blood drawn and tested; and

28 (ii) Have a second sample of capillary blood drawn and tested  
29 within 84 days after the first sample is drawn.

1           (3) If the result of one capillary blood test would require action under  
2 this subtitle and the other result would not, an individual's elevated blood lead level  
3 shall be confirmed by a venous blood test.

4           (g) "Exterior surfaces" means:

5           (1) All fences and porches that are part of an affected property;

6           (2) All outside surfaces of an affected property that are accessible to a  
7 child and that are:

8           (i) Attached to the outside of an affected property; or

9           (ii) Other buildings and structures, including play equipment,  
10 benches, and laundry line poles, that are part of the affected property, except buildings  
11 or structures that are not owned or controlled by the owner of the affected property;  
12 and

13           (3) All painted surfaces in stairways, hallways, entrance areas,  
14 recreation areas, laundry areas, and garages within a multifamily rental dwelling unit  
15 that are common to individual dwelling units and are accessible to a child.

16           (h) "Fund" means the Lead Poisoning Prevention Fund.

17           (i) (1) "High efficiency particle air vacuum" or "HEPA-vacuum" means a  
18 device capable of filtering out particles of 0.3 microns or greater from a body of air at  
19 an efficiency of 99.97% or greater.

20           (2) "HEPA-vacuum" includes use of a HEPA-vacuum.

21           (j) "Lead-based paint" means paint or other surface coatings that contain  
22 lead in excess of the maximum lead content level allowed by the Department by  
23 regulation.

24           (k) "Lead-contaminated dust" means dust in affected properties that  
25 contains an area or mass concentration of lead in excess of the lead content level  
26 determined by the Department by regulation.

27           (l) "Lead-free" means at or below a lead content level deemed to be lead-free  
28 in accordance with criteria established by the Department by regulation.

29           (m) "Lead-safe housing" means a rental dwelling unit that:

30           (1) Is certified to be lead-free in accordance with § 6-804 of this  
31 subtitle;

1 (2) Was constructed after 1978;

2 (3) Is deemed to be lead-safe by the Department in accordance with  
3 criteria established by the Department by regulation; or

4 (4) Is certified to be in compliance with § 6-815(a) of this subtitle and:

5 (i) In which all windows are either lead-free or have been  
6 treated so that all friction surfaces are lead-free;

7 (ii) In which lead-contaminated dust levels are determined to  
8 be within abatement clearance levels established by the Department by regulation,  
9 within a time frame established by the Department by regulation; and

10 (iii) Which is subject to ongoing maintenance and testing as  
11 specified by the Department by regulation.

12 **(M-1) (1) "MANUFACTURER OF LEAD PIGMENT" MEANS A PERSON WHO**  
13 **MANUFACTURED OR PRODUCED LEAD PIGMENT FOR SALE OR USE AS A**  
14 **COMPONENT IN PAINT.**

15 **(2) "MANUFACTURER OF LEAD PIGMENT" DOES NOT INCLUDE:**

16 **(I) A PERSON WHO ONLY SOLD LEAD PIGMENT OR LEAD**  
17 **PIGMENT AS A COMPONENT OF LEAD-BASED PAINT AT RETAIL OR WHOLESALE;**  
18 **OR**

19 **(II) A PERSON WHO ONLY APPLIED LEAD-BASED PAINT IN A**  
20 **RESIDENTIAL BUILDING.**

21 **(M-2) "MARKET FOR LEAD PIGMENT" MEANS THE MARKET FOR LEAD**  
22 **PIGMENT INTENDED FOR USE OR USED AS A COMPONENT OF LEAD-BASED**  
23 **PAINT INTENDED FOR USE OR USED IN THE UNITED STATES OF AMERICA.**

24 (n) "Multifamily rental dwelling" means a property which contains more  
25 than one rental dwelling unit.

26 (o) (1) "Owner" means a person, firm, corporation, guardian, conservator,  
27 receiver, trustee, executor, or legal representative who, alone or jointly or severally  
28 with others, owns, holds, or controls the whole or any part of the freehold or leasehold  
29 interest to any property, with or without actual possession.

30 (2) "Owner" includes:

31 (i) Any vendee in possession of the property; and

1 (ii) Any authorized agent of the owner, including a property  
2 manager or leasing agent.

3 (3) "Owner" does not include:

4 (i) A trustee or a beneficiary under a deed of trust or a  
5 mortgagee; or

6 (ii) The owner of a reversionary interest under a ground rent  
7 lease.

8 (p) "Person at risk" means a child or a pregnant woman who resides or  
9 regularly spends at least 24 hours per week in an affected property.

10 (q) "Related party" means any:

11 (1) Person related to an owner by blood or marriage;

12 (2) Employee of the owner; or

13 (3) Entity in which an owner, or any person referred to in paragraph  
14 (1) or (2) of this subsection, has an interest.

15 (r) "Relocation expenses" means all expenses necessitated by the relocation  
16 of a tenant's household to lead-safe housing, including moving and hauling expenses,  
17 the HEPA-vacuuuming of all upholstered furniture, payment of a security deposit for  
18 the lead-safe housing, and installation and connection of utilities and appliances.

19 (s) "Rent subsidy" means the difference between the rent paid by a tenant  
20 for housing at the time a qualified offer is made under Part V of this subtitle and the  
21 rent due for the lead-safe housing to which the tenant is relocated.

22 (t) (1) "Rental dwelling unit" means a room or group of rooms that form a  
23 single independent habitable rental unit for permanent occupation by one or more  
24 individuals that has living facilities with permanent provisions for living, sleeping,  
25 eating, cooking, and sanitation.

26 (2) "Rental dwelling unit" does not include:

27 (i) An area not used for living, sleeping, eating, cooking, or  
28 sanitation, such as an unfinished basement;

29 (ii) A unit within a hotel, motel, or similar seasonal or transient  
30 facility;

31 (iii) An area which is secured and inaccessible to occupants; or

1 (iv) A unit which is not offered for rent.

2 (u) "Risk reduction standard" means a risk reduction standard established  
3 under § 6-815 or § 6-819 of this subtitle.

4 (v) **"SHARE OF THE MARKET" MEANS THE PERCENTAGE OF SALES OF**  
5 **LEAD PIGMENT AND LEAD-BASED PAINT IN THE MARKET FOR LEAD PIGMENT**  
6 **ATTRIBUTABLE TO A MANUFACTURER OF LEAD PIGMENT DURING THE TIME**  
7 **PERIOD A RESIDENTIAL BUILDING AT ISSUE IN AN ACTION FOR DAMAGES**  
8 **EXISTED.**

9 **6-848.3.**

10 (A) **THIS SECTION APPLIES ONLY TO AN ACTION INVOLVING**  
11 **LEAD-BASED PAINT IN A RESIDENTIAL BUILDING.**

12 (B) **A MANUFACTURER OF LEAD PIGMENT MAY BE HELD LIABLE UNDER**  
13 **ANY LEGALLY RECOGNIZED THEORY OF LIABILITY IN AN ACTION FOR DAMAGES.**

14 (C) (1) **IN AN ACTION FOR DAMAGES UNDER THIS SECTION, A PERSON**  
15 **IS NOT REQUIRED TO PROVE THAT AN INDIVIDUAL MANUFACTURER OF LEAD**  
16 **PIGMENT MANUFACTURED THE LEAD PIGMENT CONTAINED IN LEAD-BASED**  
17 **PAINT THAT CAUSED THE DAMAGE IN ORDER TO ESTABLISH THE LIABILITY OF**  
18 **THE MANUFACTURER OF LEAD PIGMENT FOR THE DAMAGES.**

19 (2) **IN ORDER TO RECOVER DAMAGES FOR NEGLIGENCE UNDER**  
20 **THIS SECTION, A PARTY SHALL HAVE THE BURDEN OF PROVING BY A**  
21 **PREPONDERANCE OF THE EVIDENCE THAT:**

22 (i) **LEAD PIGMENT USED AS A COMPONENT IN LEAD-BASED**  
23 **PAINT WAS A SUBSTANTIAL CONTRIBUTING FACTOR IN CAUSING THE DAMAGES**  
24 **ALLEGED;**

25 (ii) **THE MANUFACTURER OF LEAD PIGMENT HAD A SHARE**  
26 **OF THE MARKET FOR LEAD PIGMENT; AND**

27 (iii) **THE MANUFACTURER OF LEAD PIGMENT BREACHED A**  
28 **LEGALLY RECOGNIZED DUTY BY MANUFACTURING, PRODUCING, OR MARKETING**  
29 **LEAD PIGMENT INTENDED FOR USE OR USED AS A COMPONENT OF LEAD-BASED**  
30 **PAINT.**

31 (D) **IF A PARTY SATISFIES THE BURDEN OF PROOF UNDER SUBSECTION**  
32 **(C) OF THIS SECTION, OR ANY OTHER LEGALLY RECOGNIZED THEORY OF**  
33 **LIABILITY AGAINST A MANUFACTURER OF LEAD PIGMENT, THE TRIER OF FACT**

1 SHALL FIND THE MANUFACTURER LIABLE FOR DAMAGES UNDER THIS  
2 SUBTITLE, UNLESS THE MANUFACTURER OF LEAD PIGMENT ESTABLISHES BY A  
3 PREPONDERANCE OF THE EVIDENCE THAT:

4 (1) THE MANUFACTURER DID NOT MANUFACTURE, PRODUCE, OR  
5 MARKET LEAD PIGMENT DURING THE DURATION OF THE EXISTENCE OF THE  
6 BUILDING AT ISSUE IN THE ACTION;

7 (2) THE LEAD PIGMENT INTENDED FOR USE OR USED AS A  
8 COMPONENT OF LEAD-BASED PAINT DID NOT ENTER THE RETAIL MARKET OF  
9 THE GEOGRAPHICAL LOCATION WHERE THE BUILDING WAS LOCATED; OR

10 (3) THE MANUFACTURER DID NOT MANUFACTURE, PRODUCE, OR  
11 MARKET ANY OF THE LEAD PIGMENT THAT MAY HAVE CAUSED THE DAMAGES AT  
12 ISSUE.

13 (E) (1) IF A MANUFACTURER OF LEAD PIGMENT IS FOUND TO BE  
14 LIABLE FOR DAMAGES UNDER SUBSECTION (D) OF THIS SECTION, THE TRIER OF  
15 FACT SHALL APPORTION THE TOTAL AMOUNT OF DAMAGES AMONG THE LIABLE  
16 MANUFACTURERS OF LEAD PIGMENT ON THE BASIS OF EACH MANUFACTURER'S  
17 SHARE OF THE MARKET.

18 (F) IF A MANUFACTURER OF LEAD PIGMENT IS FOUND TO BE LIABLE  
19 FOR DAMAGES UNDER SUBSECTION (D) OF THIS SECTION, THE LIABILITY OF  
20 THE MANUFACTURER SHALL BE JOINT AND SEVERAL.

21 (G) THIS SECTION MAY NOT BE CONSTRUED OR INTERPRETED TO  
22 PROHIBIT A MANUFACTURER OF LEAD PIGMENT FROM BRINGING A CLAIM  
23 AGAINST ANOTHER MANUFACTURER OF LEAD PIGMENT FOR CONTRIBUTION OR  
24 INDEMNIFICATION.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2013.